

SERVED: March 17, 2000

NTSB Order No. EA-4831

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of March, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15381
v.)	
)	
TERRY S. HURST,)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed an order issued on June 18, 1999, by Administrative Law Judge William A. Pope, II.¹ In that order, the law judge dismissed, as moot, respondent's appeal of the Administrator's August 26, 1998² emergency order, revoking the second-class airman medical certificate that was issued to him on July 21, 1998. According to the law judge's order, the

¹A copy of the law judge's order is attached.

²As amended on February 19, 1999.

Administrator's counsel stipulated that respondent has, subsequent to this appeal, been found by the Federal Air Surgeon to be qualified to hold an unrestricted second-class airman medical certificate. Respondent nonetheless declines to abandon his appeal, because of his concern that a record of the emergency revocation order still remains in his airman records that are maintained by the Administrator.

The Administrator has filed a brief in reply, urging the Board to affirm the law judge's dismissal of this matter. Simultaneously, the Administrator has filed a "Withdrawal of the July 21 (sic) Amended Emergency Order of Revocation."³

In an appeal to the Board under the provisions of 49 U.S.C. 44709(d), the Board must determine whether safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. Based on that determination, the Board may then amend, modify, or reverse the Administrator's order. In order to determine whether the Administrator's order in this matter should be affirmed, the only issue to be resolved is whether respondent is qualified to hold an unrestricted second-class airman medical certificate.⁴ Since that issue is no longer in dispute, and particularly in light of the Administrator's withdrawal of the underlying emergency revocation

³We assume that the Administrator intended to withdraw the February 19, 1999 Amended Emergency Order of Revocation.

⁴Medical qualification depends on the regulations and the condition of the petitioner or respondent at the time of the hearing, rather than at the time of the denial or revocation. Petition of Doe, 2 NTSB 1041, 1043 (1974).

order, respondent's appeal is moot.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal is dismissed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.